

Issues on which the Task Force Did Not Achieve Consensus

Issue: Whether to create an additional incentive to create rental housing.

Discussion: In Favor: Because multifamily rental housing is an important component to a balanced housing program, tends to serve lower income families, provides a housing opportunity for tenants with section 8 vouchers, and addresses a housing need for families who are not able to take advantage of homeownership opportunities, and multifamily rental housing is frequently difficult to permit under existing zoning, the state should create an incentive to permit and build multifamily rental housing. Further, the state could direct its discretionary housing resources toward rental developments.

Against: Since rental housing is advantageous in terms of how units are counted toward a community's housing goals on the subsidized housing inventory, it is unnecessary to create a further incentive.

Issue: Make the statutory minima regulation consistent with MGL Chapter 40B; so that the statutory minima is based upon total year round housing units as enumerated in the most recent federal decennial census.

Discussion: While the Task Force did not discuss this technical change in enough detail to make a recommendation, DHCD will further examine this issue to determine whether a regulatory clarification would be consistent with the other recommendations of the task force.

In Favor: This change would be consistent with the statute and would provide a stable, consistent, and reliable basis for determining the statutory minima.

Against: The basis on which the statutory minima is determined is based on year round housing units, and as such, should be updated continuously as that number of housing units changes.

Issue: Allow planning boards, rather than zoning boards of appeal to evaluate comprehensive permit applications, at local option. The Task Force did not achieve consensus regarding whether municipalities should be able to evaluate whether planning boards, rather than zoning boards would be best suited to evaluate comprehensive permit applications.

Discussion: In Favor: Planning boards have better skills and expertise to review housing and land development proposals. The involvement of the planning board will integrate their planning function with the permitting of housing. Planning Boards are often involved in community-wide planning, and as such, are well equipped to determine the appropriateness of a particular proposal within its immediate context, as well as within the larger context of the entire community.

Against: The role of the ZBA is to hear cases for appeals related to local zoning and have the ability to solicit input from other boards, therefore it is appropriate for them to permit applications for comprehensive permits. In contrast to planning boards, zoning boards are appointed and not subject to election cycles and political pressures. There was also concern that planning boards have other responsibilities to review other types of applications and might slow the 40B permitting process.

Issue: Due to the difficult process of creating affordable housing, communities should be able to impose longer affordability restrictions to ensure the affordable units it has created remain so for a longer period of time.

Discussion: While it is desirable for municipalities and developers to negotiate to achieve affordability goals, there are instances in which it is impracticable to create such longer deed restrictions. For instance, in rental developments, it may be appropriate for developers and municipalities to negotiate for longer deed restrictions. However, in some instances, such as homeownership developments, constraints such as lack of marketability of mortgages in the secondary mortgage market may render longer affordability restrictions impracticable, and ultimately, render the proposed development uneconomic. It was noted that the Ardmore decision provides that unless the comprehensive permit stipulates otherwise, the units shall be kept affordable for as long as the underlying zoning is overridden. It was decided to maintain the minimum 30-year requirement and encourage communities to negotiate longer terms on a case-by-case basis.

Issue: Change the “cooling off” regulation so that it operates both ways, at the municipality's option. For example, if a comprehensive permit application is made, a developer would be precluded from

filing an application for as-of-right development for a period of twelve months.

Discussion: The Task Force did not achieve consensus on this issue; while it did recognize that the “cooling off” regulation may create an incentive to propose developments under Chapter 40B, it would be inappropriate to modify the Housing Appeals Committee regulations in a manner that would limit a housing developer’s right to develop property under as-of-right zoning.

Issue: Establish guidelines for allowable acquisition cost for land so that acquisition cost cannot be used to inappropriately inflate profit.

Discussion: The Task Force agreed that it is not necessary to establish such guidelines since all developers are legally bound by program guidelines, by contract and by statute to ensure that profits are limited appropriately.

Issue: Reduce developers’ profits on comprehensive permit homeownership developments to a lower percentage of allowable total development costs, such as 10% or 15%.

Discussion: The Task Force did not achieve consensus on this issue, based on testimony that the currently enforced 20% profit limitation is below the typical profit margin on as-of-right housing developments, and that further reducing the allowable profit margin could render projects uneconomic.

Issue: Allow for third party approval of pro-formas.

Discussion: The Task Force did not achieve consensus on this issue. Current regulations require that subsidizing agencies evaluate pro-formas to make a determination with respect to financial viability. Furthermore, they are required by statute and by contract to ensure financial issues are consistent with the statute, regulations, and contractual obligations.

Issue: Require independent appraisals.

Discussion: The Task Force did not achieve consensus on this issue. Current regulations require that subsidizing agencies evaluate total allowable development costs to make a determination with respect to financial viability. Furthermore, they are required to ensure financial issues, including allowable acquisition cost and total

development costs, which ultimately determine profit, are consistent with the statute, regulations, and contractual obligations. However, the parties are free to agree that an independent appraisal is warranted to determine cost valuation.

Issue: Require different income bands in Chapter 40B developments to serve lower-income households.

Discussion: While it is incumbent on each municipality to negotiate with developers of Chapter 40B housing to meet the housing needs of its residents, the Task Force did not achieve consensus on this issue, since such a requirement could render a development uneconomic.

Issue: Make housing funds available outside of the competitive funding process to help cities and towns negotiate enhanced affordability.

Discussion: Given that state funds available for housing development are at their lowest levels in 25 years, it is untenable at this time to increase such funding. However, communities may utilize their discretionary funding sources, such as Community Preservation Act Funds of local affordable housing trust funds to enhance affordability of such housing developments.

Issue: Require more than 25% of units in Chapter 40B developments be affordable to low- or moderate-income households.

Discussion: The Task Force did not achieve consensus on this issue. Such a requirement could render a proposed housing development uneconomic, and each housing development must be evaluated on a case-by-case basis. In addition, such a requirement would fundamentally change Chapter 40B.

Issue: Allow abutter appeals to be heard and disposed by the Housing Appeals Committee, rather than Superior Court, or alternatively, abolish the Housing Appeals Committee and have all appeals pursuant to Chapter 40B be determined by Land Court.

Discussion: Consensus was not reached on this issue based on testimony identifying the limited staffing resources of both the Housing Appeals Committee and the Superior Court. However, the impact of delays in the current appeals process on the production of housing needs to be addressed. Certain Task Force members noted that the delays experienced in Superior Court could easily

exceed those in the Housing Appeals Committee, particularly given the pending court reorganization. In addition, this issue will be addressed by the *ad hoc* committee charged with evaluating the Housing Appeals Committee Framework.